

ARTICLE 1

FRANCHISES

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ARTICLE 1

FRANCHISES

SEC. 11-1.00 FRANCHISE REQUIRED. No person shall exercise any franchise, permit or privilege mentioned herein except insofar as he may be entitled to do so by direct authority of the Constitution of the State of California or the Constitution or laws of the United States, in, upon, over, under or along any public place in the City of Hayward, unless he or it shall have obtained a grant therefor in accordance with the provisions hereof and of the applicable provisions of the Charter. Nothing herein contained shall be construed to invalidate any lawful franchise heretofore granted, nor to necessitate the obtaining of a new franchise for a use for which a franchise holder shall have a valid unexpired franchise.

SEC. 11-1.01 MATTERS SUBJECT TO FRANCHISE. Except insofar as he may be entitled to do so by direct authority of the Constitution of California, or of the Constitution or laws of the United States, no person shall exercise any privilege enumerated in this Section unless he shall have been granted an appropriate franchise therefor by the City of Hayward, namely:

- (1) Construct, maintain or operate, a street, interurban, underground, or elevated, steam or commercial railroad, or other system for transporting or conveying passengers or freight (including any appurtenances which are a part of the system) over a fixed route, along, upon, over, in, under or across any public place in the City of Hayward.
- (2) Construct, maintain or operate pipes, tubes or conduits along, upon, over, in, under or across any public place in the City of Hayward for the purpose of transmitting or distributing water, gas, steam, oil, air or other substance or utility.
- (3) Erect, construct, lay, maintain or operate poles, pipes, conduits, wires, cables, or appurtenances, upon, over, under, in, across or along any public place in the City of Hayward for the purpose of transmitting or distributing power, heat, electricity or electric energy, or for a communication by telephone, telegraph, or other system.
- (4) Construct, maintain or operate any other plants or system necessary or convenient for furnishing the City and its inhabitants with transportation, communication, water, light, power or other public utility service.

The term "public place" as used herein shall be deemed to include any street, lane, alley, court or other public place in the City.

Nothing in this Section shall be construed as applying to spur or side tracks, nor to require motor, contract or other carriers of freight or passengers not operating over a fixed route to obtain franchises for use of any public place of the City.

SEC. 11-1.02 FRANCHISES. AUTHORITY OF COUNCIL. Pursuant to its constitutional, charter and statutory authority, the City Council may grant franchises and privileges for all of the purposes enumerated herein to persons whether operating under any existing franchise

or not, upon such terms and conditions as are in the applicable provisions of the Charter, and any ordinances adopted pursuant thereto, and may in such franchises impose such other and additional terms and conditions not in conflict with said Charter or ordinances, whether governmental or contractual in character, as in the judgment of said Council are in the public interest.

SEC. 11-1.03 FRANCHISE TERMS AND CONSIDERATIONS. No franchise shall be granted without reserving to the City adequate consideration for the privilege conferred.

Franchises may be granted either for a fixed or an indeterminate period.

SEC. 11-1.10 FRANCHISE APPLICATION. An applicant for any franchise above mentioned, shall file with the City Council a verified application which shall state (a) the name of the applicant, (b) the purpose and term, whether definite or indeterminate, for which the franchise shall be desired, (c) the amounts and/or percentages, if any, applicant if granted the franchise, will pay to the City during the life of such franchise, (d) any limitations as to time, place or type of services proposed by applicant, and (e) any other terms or conditions that applicant may desire, including surrender of existing franchises, or parts thereof, or claims to such franchises, or proposals to settle any litigation or controversies between the applicant and the City.

Franchise applications shall set forth such other information as the City Council may require.

SEC. 11-1.11 APPLICATION FEE. Every application for a franchise, permit or privilege shall be accompanied by a cash deposit of not less than Five Hundred Dollars (\$500.00), or by a certified check for said amount, payable to the City, as a fund out of which to pay all expenses connected with such application. The deposit of the applicant shall be retained until the acceptance of the franchise and the filing of any bond or other security required or until the Council determines not to grant the franchise. Thereupon the remainder, if any, of the Five Hundred Dollars (\$500.00) after the payment therefrom of all such expenses incurred by the City shall be returned to applicant.

SEC. 11-1.12 FRANCHISE. CALL FOR BIDS DISCRETIONARY. The Council may grant a franchise without calling for bids or may, in its discretion, advertise for bids for the sale of a franchise after notice inviting bids therefor upon a basis, not in conflict with the provisions of the Charter, to be set out in advertisements for bids and notice of sale, provided that no bidding shall be had or required upon any renewal of a franchise, surrender of existing franchise or parts thereof, or in settlement of litigation between the grantee and the City.

SEC. 11-1.13 APPLICATION - REFERRAL. Every application made to the Council for a franchise, privilege or permit mentioned herein shall, before any action is taken thereon, be referred by the Council to the City Manager and City Attorney for their respective recommendations.

Before making his recommendations to the Council, the City Manager shall obtain the recommendations of the Director of Public Works, the Planning Director and the Traffic Engineer.

SEC. 11-1.14 FRANCHISE. NOTICE OF HEARING. Upon receipt of the City Manager's recommendation, the Council may pass a resolution declaring its intention to grant the franchise, stating the character of the same, setting forth a notice of the day, hour and place when and where any and all persons having any objection to the granting thereof may appear before the Council and be heard thereon, and directing the City Clerk to publish said notice at least once within fifteen (15) days after the passage of said resolution. The time fixed for such hearing shall be not

less than twenty (20) nor more than sixty (60) days after the date of the passage of said resolution.

Such notice shall state the name of the applicant, the character of the franchise, its term, whether definite or indeterminate, the amounts and/or percentages, if any, grantee shall pay to the City during the life of such franchise, any limitations as to time, place or type of service proposed, the amount and character of any bond or other security required, together with an outline of the other major provisions of the proposed franchise.

SEC. 11-1.15 HEARING. At any time not later than the hour set for the hearing of objections, any person interested may make written protest stating objections against the granting of such franchise. Such protest must be signed by the protestant and be delivered to the City Clerk. At the time set for hearing objections the Council shall proceed to hear and pass upon all protests so made and its decision shall be final and conclusive. The Council may adjourn said hearing from time to time.

If no protest in writing shall have been delivered to the Clerk up to the hour set for hearing, or such other protests as shall have been filed shall have been heard and determined by the Council to be insufficient, or shall have been overruled or denied, the Council may grant such franchise. Such franchise shall be granted by ordinance adopted in the manner prescribed by the Charter.

SEC. 11-1.20 FRANCHISE BOND. The Council may require the grantee of any franchise to provide such bond or other security as it deems the public interest requires.

SEC. 11-1.30 TRANSPORTATION FRANCHISE. Every franchise granted a transportation company shall specify the area in which the grantee shall operate, the public places or routes to be followed by the tracks or vehicles of the grantee which area, public places and routes shall be subject to the lawful orders of the Public Utilities Commission of the State of California.

SEC. 11-1.40 ACCEPTANCE OF FRANCHISE. The grantee of any franchise granted hereunder shall within ten (10) days after the franchise is granted, file with the City Clerk a written acceptance of the terms and conditions thereof and any bond or other security required by the Council.

SEC. 11-1.50 FRANCHISE. OBLIGATION OF GRANTEE. The grantee of any franchise granted pursuant hereto shall (a) construct, install and maintain all tracks, pipes, tubes, conduits, poles, wires, instrumentalities and appurtenances in accordance and in conformity with all of the lawful ordinances, rules and regulations theretofore or thereafter adopted by said City in the exercise of its police powers, and, as to State Highways, subject to the provisions of general laws relating to the location and maintenance of such facilities therein, (b) pay to the City on demand the cost of all repairs to public property made necessary by any operations of the grantee under such franchise, (c) indemnify and hold harmless the City and its officers and employees from any and all liability for damages proximately resulting from any operations under such franchise, and (d) make such reports and permit such examinations of its records as the franchise may require.

SEC. 11-1.60 FRANCHISE ASSIGNMENT. No franchise, permit or privilege granted by the City shall be in whole or in part, leased, assigned or otherwise disposed of, or transferred without the express consent of the City, provided that nothing herein shall be construed to prevent the grantee from the City of such franchise, permit or privilege from including it in a mortgage or trust deed without such express consent.

SEC. 11-1.70 SPECIAL PERMITS. When the Council shall find that an emergency

exists and that public convenience and necessity require it, a special permit may be granted to any applicant for a franchise to permit such applicant to proceed with the relocation, extension, alteration or other change in existing facilities, except repairs or maintenance changes, which relocation, extension, alteration or other change in existing facilities by reason of such emergency should be made before the securing of a franchise is possible.

Such special permit shall only be granted to an applicant for a franchise, and after the filing of the application for a franchise as provided herein.

SEC. 11-1.71 APPLICATION FOR SPECIAL PERMIT. An application for a special permit shall be filed in writing with the Council setting forth such information as will permit action thereon. Reference in said application may be made to the application for a franchise for a description of the proposed extension, alteration or other change in existing facilities.

Applications for special permits shall be referred to the City Attorney and the City Manager in the manner provided for applications for franchises.

SEC. 11-1.72 SPECIAL PERMITS. GRANTING. All such special Permits shall be granted under the express condition that if a franchise under this Article is not granted and accepted, all work done under such special permit shall be removed immediately at applicant's expense and the streets or alleys or other public places affected by such work shall be placed in as good condition as before such work was done, all to the satisfaction of the Director of Public Works.

SEC. 11-1.73 SPECIAL PERMITS. BOND. The Council may require, as a condition to the granting of such special permits, that a bond of a kind and in an amount determined by it shall be furnished by applicant conditioned upon the faithful performance of the terms and conditions of the permit and further conditioned that applicant shall prosecute diligently to completion all work thereunder including removal work as hereinbefore provided.

SEC. 11-1.100 CITATION AND AUTHORITY. These provisions shall be known and may be cited as the 'Cable Consumer Complaint Procedures' of the City of Hayward, and are adopted as a local ordinance dealing with a municipal affair pursuant to Section 200 of the Charter of the City of Hayward and pursuant to California Government Code Section 53066.1 which authorizes the adoption of ordinances to provide for consumer complaint resolution procedures when a community antenna television system franchise elects to deregulate. These procedures shall be controlling over the provisions of any general law in conflict herewith.

SEC. 11-1.01 PURPOSE AND INTENT. The purpose of these provisions and the intent of the City in their adoption is to provide for resolution of consumer complaints, remedies for inadequate service or service deficiencies, and penalties for violations of material franchise terms by a cable company franchised to operate within the city which elects to deregulate pursuant to California Government Code Sections 53066 and 53066.1.

SEC. 11-1.102 LOCAL OFFICE. Franchisee shall maintain a local office within the franchise area open to the public during regular business hours, Monday through Friday, except holidays. Office hours shall be posted at the office location. Franchisor shall be notified of hours of operation. In addition, franchisee shall have the capability of receiving service calls 24-hours a day, 7 days a week.

SEC. 11-1.103 PROCEDURES FOR CONSUMER COMPLAINTS. Franchisee shall submit to the City Manager for approval, within 30-days of the enactment of this ordinance or decision to deregulate, procedures the franchisee intends to implement for receiving, acting upon,

and resolving consumer complaints. Procedures approved by the City Manager may not be altered without approval.

SEC. 11-1.104 NOTICE TO CONSUMERS. Franchisee shall provide written notice to each subscriber at the time of initial service, of the procedures for placing a service call or other complaint and the related consumer protection sanctions. Annually, thereafter, subscribers shall be notified in writing of the existence and availability of such procedures. The notice shall include the name, business address and business telephone number of the office of the franchisee established to handle such problems, and the name, business address, and telephone number of the City office designated by the City Manager to receive complaints. The notice also shall include information regarding service response times.

SEC. 11-1.105 SERVICE RESPONSE STANDARDS. Franchisee shall provide service response, 24-hours a day, 7-days a week, for all complaints and requests for repairs or adjustments. Calls involving loss of reception on all channels shall be responded to immediately. Calls concerning degraded reception, including channel outages, shall be responded to within twenty-four (24) hours unless they can be attributed to the subscriber or user, or when it is beyond the franchisee's control (i.e., satellite signal). If franchisee declares under penalty of perjury that the outage was beyond franchisee's control, there will be no penalty levied against the franchisee for interruption of service.

SEC. 11-1.106 SERVICE AND COMPLAINT RECORDS. Franchisee shall maintain a daily record or "log" listing date and time of customer complaints or requests for service, describing the nature of the complaint or request for service, and when and what action was taken by the franchisee in response thereto, including the time the complaint was received and the time it was cleared". Record(s) shall be kept in franchisee's local office, for a period of at least three (3) years and shall be available for inspection by the City Manager, or the City Manager's designated representative, during regular business hours without special or advance notice or demand.

SEC. 11-1.107 INSTALLATION AND SERVICE APPOINTMENTS. Franchisee shall specify a four hour time period for all installation or service appointments.

If the franchisee's service technician is unable to keep an appointment concerning installation or for other service, the franchisee shall call and advise the subscriber of the delay, and attempt to reschedule the appointment. If such a call is made or if franchisee declares under penalty of perjury a call was made and no one answered, there will be no penalty levied against franchisee for failure to meet the timing requirements.

If the franchisee fails to advise the subscriber of the delay and fails to keep an appointment concerning installation of service, the franchisee shall be subject to a penalty pursuant to Section 11-1.110 f.

If the franchisee advises the subscriber of the delay and sets a second appointment and fails to keep the second appointment concerning installation for whatever reason, the franchisee will be subject to a penalty pursuant to Section 11-1.110 f.

For any type of service appointment other than installation, if franchisee fails to call the subscriber in the event of a delay resulting in a missed appointment, the franchisee shall be subject to a penalty pursuant to Section 11-1.110 g.

If a dispute arises regarding a missed appointment, the franchisee shall provide to the City Manager, or the City Manager's designated representative, all pertinent business documentation

concerning the scheduling of the appointment. The normal business records of the franchisee shall be available for this purpose, consistent with the privacy provisions contained in the Cable Communications Policy Act of 1984.

SEC. 11-1.108 APPEALS TO ARBITRATION. In the event that a customer complaint or service problem is not resolved to the mutual satisfaction of the customer and the franchisee, either the customer or the franchisee may request, through the City Manager, that the matter be presented to an arbitration panel which shall meet in the City of Hayward for hearing and resolution. The panel shall consist of three individuals, one selected by the franchisor, one by the franchisee and one neutral individual. The neutral member shall be selected jointly from a list secured from the American Arbitration Association. Rules of the California Code of Civil Procedure, Sec. 1280 et seq. shall be followed. Notice regarding hearing shall be given to all interested parties by the franchisor. All costs of arbitration shall be borne by the franchisee. The decision of the arbitration panel shall be final and binding on all parties.

SEC. 11-1.109 SPECIAL PERFORMANCE TESTS. When, in the judgment of the City Manager, there have been similar complaints or service problems, or where there exists other evidence which casts doubt on the reliability or quality of the cable service being provided, the City Manager shall have the authority to compel the franchisee to test, analyze, and report on the performance of the part(s) of the system which appear to be involved in the problem(s). The City Manager shall notify franchisee in writing of the need to test the system.

Such test(s) may be conducted by the franchisee. The franchisor reserves the right to direct that such tests be made by an independent consultant retained by the City, but paid for by the franchisee. Tests shall be conducted consistent with the standards set forth in the franchise agreement. The investigation of the problem(s) shall be completed within 30-days of the date of formal notification. Reports on the investigation shall be delivered to the City no later than 15-days after completion of testing. The report(s) shall include the following information:

- a. Nature of the complaints or service problems which precipitated the special test(s);
- b. System component(s) tested;
- c. Equipment used and procedures employed in such testing;
- d. Test results;
- e. Method by which complaints or service problems were resolved;
- f. Any other information pertinent to the special testing also shall be recorded.

The City's rights under this provision shall be limited to requiring tests, analyses, and reports covering specific subjects and characteristics based on complaints, service problems, or other evidence which provided the City with reasonable grounds to believe testing necessary to protect the public against sub-standard cable service.

SEC. 11-1.110 PENALTIES FOR SYSTEM INSTALLATION DELAYS, INADEQUATE OR UNTIMELY SERVICE, OR INTERRUPTION OF SERVICE. The following remedies and penalties for system installation delays, for inadequate or untimely service, or for interruption of service, are hereby established.

- a. In the event that service to any subscriber is interrupted for twenty-four (24)

consecutive hours or more, except for acts of God, and except in circumstances for which approval of the interruption is obtained from the City Manager, franchisee shall provide a twenty (20) percent credit of the monthly fees (basic plus special or premium service) for each 24-hour period, or fraction thereof, of interruption to the affected subscriber for each month in which an interruption occurred.

- b. If service to five (5) or more subscribers, served by a common distribution feed, is interrupted for forty-eight (48) hours, except for acts of God, and except in circumstances for which approval of the interruption is obtained from the City Manager, the City Manager is authorized to impose a penalty of \$500 per day, payable to the City. Franchisee shall additionally provide a credit to each subscriber so affected of twenty (20) percent of their monthly bill for each twenty-four (24) hours, or fraction thereof, that service is interrupted.
- c. In the event that degraded reception (poor quality) is a result of technical deficiency of the system and not caused by the equipment of the subscriber or user or abuse of the operator's equipment by the subscriber or user or other cause, the franchisee shall credit the subscriber with twenty (20) percent of the monthly fee (basic plus other) for each twenty-four (24) hours, or fraction thereof, a subscriber had a picture quality problem twenty-four (24) hours after making complaint to the franchisee.
- d. In the event that the system fails to meet one or more of the operational standards detailed in the franchise agreement and for which a performance test has been requested pursuant to Sec. 11-1.109 for a full three-month period, franchisee shall reduce fees to all subscribers by twenty-five (25) percent until all operational standards are met. The City Manager's notification to conduct performance tests pursuant to Sec. 11-1.109 shall be the date upon which the 3-month period commences.
- e. Failure to provide service once requested by prospective subscriber:
 - (1) New Construction: Within sixty (60) days following occupancy of thirty-five (35) housing units or sixty (60) percent of units, whichever is less, of each construction phase, provided there are no impediments to providing such service as a result of the actions of other public utilities. \$150 per requesting household per day payable to City.
 - (2) Within two weeks for individual service requests, if there is service capability within 100 feet of requestor. \$150 per requesting household per day payable to City.
 - (3) Within three (3) days if able is in and unit was previously served. \$150 per requesting household per day payable to

City.

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| f. | Failure to advise consumer of delay in appointment for installation or keep second appointment. | Free installation. |
| g. | Failure to advise consumer of delay in appointment for service when such delay is in control of franchisee, or keep second appointment. | One month's free basic service. |
| h. | Unauthorized disconnection of service by cable operator or its agent. | \$30 per subscriber per day. |

SEC. 11-1.111 PENALTIES FOR BREACH OF MATERIAL FRANCHISE

TERMS. The following penalties for breach of material franchise terms are hereby established. These penalties shall be payable to the City of Hayward.

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| a. | Failure to distribute color signals in color where provided. | \$100 per channel per day. |
| b. | Failure to make a demonstration of signal quality upon request. | \$100 per failure. |
| c. | Failure to comply with established operational standards. | \$200 per day following notification. |
| d. | Failure to repair system deficiencies within forty-eight (48) hours. | \$100 per day following notification. |
| e. | Failure to keep and preserve required records consistent with the Cable Communications Policy Act of 1984. | \$25 per day commencing 30-days after notice from City specifying deficiencies. |
| f. | Failure to comply with information requirements. | \$100 per incident. |
| g. | Failure to file financial statement within 30-days after June 30 and December 31 of each calendar year. | \$100 per occurrence |
| h. | Failure to permit or facilitate inspection of records consistent | \$100 per occurrence. |

with the privacy provisions of the
Cable Communications Policy Act
of 1984.

If the franchisee files, in writing with the City Manager an objection to a penalty under this section within ninety (90) days after imposition of such penalty, the City and franchisee shall participate in arbitration in accordance with the process established under Section 11-1.108.

SEC. 11-1.112 POSTING OF BOND. Pursuant to the provisions of Government Code Section 53066.1, a community antenna television system (CABLE) franchise shall be required to post a bond to secure payments and penalties for violations of franchise terms and conditions within ninety (90) days of the franchisee's election to deregulate and shall thereafter maintain such bond as a condition of continuing deregulation. The amount of the bond shall be the maximum permissible under the provisions of Government Code Section 53066.1(n).